

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
December 6, 2005**

Place: Auditorium
Town Hall

TIME: 8:00 PM

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:
Damanti, Conze, Forman, Kenny, Spain, Bigelow

STAFF ATTENDING: Ginsberg, Keating
COURT RECORDER: Beler

At 8:00 P.M., Chairman Damanti read the first agenda item:

PUBLIC HEARING

Continuation of Public Hearing regarding Application for Approval of Affordable Housing, Coastal Site Plan Review #150-A, Land Filling & Regrading Application #147, Christopher and Margaret Stefanoni, 77 Nearwater Lane. Proposing to raze the existing residence and to construct 20 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in two new buildings with associated parking and regrading, and to perform related site development activities within a regulated area. The subject property is located on the west side of Nearwater Lane approximately 300 feet south of the intersection of Nearwater Lane and Nickerson Lane, and is shown on Assessor's Map #52 as Lot #5, R-1 Zone. *The Public Hearing for this application was opened on November 1, 2005 and continued to November 29, 2005.*

Mr. Damanti noted that the Environmental Protection Commission (EPC) will be discussing this matter on December 7th and having a public hearing on this matter December 14th. He then referenced Section 8-30g(b)(1) of the Connecticut General Statutes. He noted that in his opinion, the applicant needs to supply a proposed Zoning Regulation under this State statute but that has not yet been submitted.

Attorney Wilder Gleason of Gleason & Associates was present on behalf of the Darien Land Trust, and introduced Michael Aurelia. Mr. Aurelia said that the Land Trust property consists of very healthy tidal wetlands. It is a combination of high and low marsh and it is the largest remnant cove tidal marsh left in Holly Pond. He said that DEP maps from the 1970s documented the conditions of Holly Pond and these wetlands are also shown on the Town of Darien Inland Wetlands and Watercourses Map.

A discharge pipe from a Town street enters a drainage channel into the Pond. There are non-indigenous Phragmites near the outflow and there is lack of diversity of water life species within that immediate vicinity. There is greater diversity of species away from the pipe outlet. The natural functions of these wetlands include wildlife habitat and an nutritional supply for many species and a buffer from storm surges. There is a pollution filter when the wetlands are large enough and it also

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serves to provide for education and recreation. Mr. Aurelia then referred to the DEP map of natural areas of diversity for critical species. He suggested that there might well be a great egret and snowy egret among these species within the area.

Mr. Aurelia said that the edge of Holly Pond should be one foot above the annual flood. He then referred to his package of submitted information including proposed limits on impervious surface to 25% or less of any site. He noted that if one does not trap sedimentation on site, it will get into the tidal wetlands and/or foster an expansion of the Phragmites. Adding fresh water can also increase the Phragmites. Significant impacts upon coastal resources of Holly Pond, particularly the tidal wetlands on the property of the Darien Land Trust will occur if these limitations are not carried out.

Attorney Gleason again said that he represents the Darien Land Trust which owns several parcels south of the Stefanoni property. He then submitted copies of the deeds of those parcels. These deeds include deed restrictions that require that the properties be maintained as natural open space areas. About 85 to 90% of the Land Trust properties adjacent to Holly Pond are tidal wetlands or inundated with waters of Holly Pond. Mr. Gleason mentioned that he had previously submitted a Petition of Intervention. He then outlined the Land Trust mission and submitted a copy of that for the record. He believed that this is among the most important Land Trust properties. The site is highly visible from a main road and rich in bio-diversity. It provides an area of significant open vistas and is available for passive recreation. Mr. Gleason then submitted copies of the EPC minutes along with the letter from Nancy Sarner in 2004 regarding jurisdiction. He then submitted a letter/report from Tom Pietras in 2002 that this area is tidal wetlands not inland wetlands. On the applicants' property, some of the proposed retaining wall and much of the fill is within 50 feet of this wetlands. He then referenced the November 16, 2004 letter from Nancy Sarner stating that the property is not within 100 feet of the mean high water line of Holly Pond.

Mr. Gleason said that the Planning & Zoning Commission should deny the subject application due to the failure to apply to the Environmental Protection Commission (EPC) first, and due to the impacts upon the coastal area management resources. He then submitted a copy of a portion of the EPC Inland Wetland Regulations and specifically referred to Section 2.1y. "If the activity alters or pollutes or alters a wetlands or watercourse, then it is a regulated activity and needs a permit from EPC. This is even if it is remote from the wetland or watercourse." He then referred to Tab 4 of the letter from Robinson & Cole regarding the Vortech units. He noted that the system only catches 80% of the pollutants and 20% will go to the wetland and could significantly impact the wetlands.

Mr. Gleason then reviewed Connecticut General Statutes Section 8-22a-29 regarding the definition of tidal wetlands. He said according to Engineer Joe Risoli, the local extreme high water is Elevation 5.8. One foot above that would be Elevation 6.8 as shown on the submitted map which would be the limit of tidal wetlands. The limit of Holly Pond would be the edge of the tidal wetlands, not the mean high water line as incorrectly referred to by the EPC staff letter. Mr. Gleason noted that the Planning & Zoning Commission has jurisdiction over the area within 1,000 feet of the coastal resource – the tidal wetlands. He noted that Holly Pond is a watercourse and that EPC jurisdiction is within 50 feet of tidal wetlands.

Mr. Gleason then reviewed Section 810 of the Darien Zoning Regulations regarding coastal area management review. He noted that the Regulations specifically state the application is exempt if it is more than 100 feet from mean high water and has no potential impact. He believed that this

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project will impact natural resources and is not exempt and should be denied. He then submitted a copy of the draft portion of the Darien Town Plan of Conservation & Development which shows the impact of having more than 25% impervious surface. He explained that adverse impacts occur when more than 25% of the site is covered and this site proposes more than 50% coverage.

Mr. Gleason then outlined Section 850 of the Darien Zoning Regulations regarding land filling, excavation and regrading. He said that 6 feet of fill will be held back by a retaining wall, but no details of the proposed retaining wall were submitted. If the retaining wall fails and collapses, it would collapse toward the sensitive resources on the Darien Land Trust property including the tidal wetlands. He noted that Section 854a of the Darien Zoning Regulations requires a finding of no impact and Section 854h requires that any excavation, fill or grading shall not inflict any substantial detriment on the natural environment or on the irreplaceable natural resources of its environs as judged by the Commission. Section 854i says no excavation, fill or grading shall cause any negative effects on storm water drainage especially as it may impact adjacent properties. Mr. Gleason then contended that adjacent means nearby and not necessarily abutting. He then said that Section 870 of the Darien Zoning Regulations regards soil erosion and sediment control and there is no submitted detail narrative from applicants as specifically required by Section 874.1 of the Darien Zoning Regulations. Mr. Gleason then submitted a document entitled "Remaining Questions and Issues" and he said that the Planning & Zoning Commission should have the applicants respond to and address all of these issues. He believed that the project will adversely impact coastal resources and it must be denied.

Attorney Bruce Hill said that he was present on behalf of a number of neighbors including the Hollises, the Calbys, the Duncans and the Judges. He claimed that in light of the sequencing failure vis-à-vis EPC, this application must be denied. Mr. Hill then introduced traffic consultant John Canning who submitted his traffic report. Mr. Canning said that the applicants' traffic report is overly simplistic, incomplete and does not address all of the issues. He says that there is no discussion of the adequacy of the existing road or addressing speeding or the issue of older drivers that will be using the street as a result of this project. He also mentioned that there is no discussion of the sidewalk which is used to get to Hindley School to the north, and none about parking which occurs on the street. The traffic study also did not discuss trees which are now in the sight lines at the site.

Mr. Canning continued by noting that there is no probative value to the traffic increase. He said that they would be adding 8 more trips in the peak hour which would not make much of a difference in queuing. However, he believes that the formula that they used is inappropriate. Mr. Canning said that one issue is traffic access by large trucks going southbound. They will require the full use of Nearwater Lane (including using the wrong direction lane, the northbound lane) to turn into the site and both lanes of the driveway on the site. He also believed that the applicant should do a July study of traffic volume on the street. He said that the driveway into the site would operate like a street which served 20 units. He then stated that this driveway should then meet all of the safety standards established for a street. He calculated that the project will generate 85 to 155 trips per day and taking all of that traffic and dumping it onto Nearwater Lane. He noted that speeding now exists on that street and the project will exacerbate this problem. He said that there is a significant amount of pedestrian and bicycle traffic going towards the school to the north and the beach to the south. He did a pedestrian survey on Wednesday, November 16th when the weather was good. He said that 31 of the 39 pedestrians in the two hour time period were children and this number is

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probably greater in July. He believes that the project will result in a substantial increase in these numbers. He said that the sidewalk is now potholed and not in good condition.

Nearwater Lane is now 22 feet wide but should be at least 24 feet wide based upon traffic volumes. The trees now limit the sight lines and the road is not well lit and there is a speeding problem. It would not be ideal to introduce more elderly drivers into these conditions. The tight turning radius will be difficult for trucks and there will be a sixfold to tenfold increase in the number of SU-30 trucks entering and exiting the site. These SU-30 trucks are larger than a UPS/Fed Ex delivery truck. Mr. Canning then addressed the issue of parking. He said that 1.5 spaces are the minimum number required for an elderly housing project, and there will likely be a parking problem. The parking lot is proposed only three feet from the north property line and any mistake by a driver will lurch the car through the proposed hedge and onto the adjacent Calby property. He said that the project could negatively impact traffic at the intersection of Nearwater Lane and Route 1, and there have been no studies by the applicant about that. Even a little increase there can make existing conditions worse. He summarized by noting that this project will impact the health and welfare of the general public.

Attorney John Cannavino said that he represents the owners of 90 Nearwater Lane. They live directly across from the wetlands which will be impacted by this project. He said that the density and the intensity is completely incompatible with the existing neighborhood. There will be water quality and water quantity impacts, and impacts in general on tidal wetlands. There will be public safety threats due to traffic increases and possible and probable on-street parking due to inadequate on-site parking. The impact upon property values in the neighborhood have nothing to do with the fact that these are affordable units, but rather are due to the bulk of the project. He then introduced Mr. Wellspeak.

Real estate appraiser Patrick Wellspeak said that he has considerable experience on appraising properties in Fairfield County. He inspected the area and gathered data from Town records. He noted that there is a difference between the applicants' submitted MIT Study circumstances and this proposal in Darien. Median home prices in the MIT Study were less than \$500,000 in 6 communities and the Darien median is \$1,185,000. There are also differences in the neighborhoods and types of housing surrounding the projects in the MIT Study. Those projects are frequently next to highways, other housing projects, commercial projects or industrial areas. The situation is entirely dissimilar with Darien as a whole and Nearwater Lane in particular. He mentioned that the MIT Study neighborhoods already were subject to other factors which affected and limited their prices. The properties in the two to five million dollar price range along this area of Nearwater Lane are dramatically different than those referred to in the MIT Study. The MIT property value study areas were generally 4 units per acre going to 12 units per acre. Nearwater Lane is generally one unit per acre and the proposal is for 20 units per acre, which is a dramatic change. He stated that his client (90 Nearwater Lane) would have a 10 to 15% negative impact to their property value, in his opinion. Other closer lots would be impacted to a greater extent, and the impacts will be greater than anything outlined in the MIT Study. Mr. Wellspeak ascertained that there will be a gain in property value for 77 Nearwater Lane at the expense of the adjacent properties. Mr. Cannavino summarized by noting that the MIT Study tried to find larger and denser developments that would impact values but they looked all over the Boston area and could not find projects as dense as that proposed at 77 Nearwater Lane.

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Mr. Hill then referred to the materials submitted regarding the affordability aspects including the letter from Ted O'Hanlan at Robinson & Cole. Mr. Hill then submitted an 11"x17" chart referring to various multi-family zones and projects now in Darien. He said that the applicants' proposal is wildly out of scale to both the neighborhood and the community. He then submitted a chart comparing the bulk of the proposed project and nearby homes. He said that the "barn-style" building, which contains six dwelling units is proposed ten feet from the Duncan property line and is 48 to 49 feet tall at the ridge. By comparison, Mr. Hill noted that the recent Grove Street Plaza commercial project in Darien is 38 feet to the ridge and would be dwarfed by this proposed project. Mr. Hill explained that recently the Planning & Zoning Commission denied an addition to the existing barn at the Ox Ridge Hunt Club which would be 60 feet from the street and 25 feet tall and found that such an addition would negatively impact the neighborhood. That proposed Ox Ridge Hunt Club addition would be dwarfed by this project.

Mr. Udi Saly of 73 Nearwater Lane then asked that the video camera taping the proceedings be turned off. Chairman Damanti then asked for a 5 minute recess, and reconvened the meeting at 10:30 p.m. At 10:30 p.m., Mr. Saly then withdrew his objection to the video camera and noted that he was raised in Israel and came to Darien and he is Jewish and feels accepted even though he is different than many people in Darien. Mr. Saly noted his professional background in waste collection and management and said that he objects to this proposal for a number of reasons. He then outlined his letter submitted for the record. He estimated that 52 people would live in this development and there are now 2.6 persons per acre in this area; and this proposal would be 19.8 times that amount. He noted that some of the liquid waste in the solid waste stream will drip into the parking area and be washed into Holly Pond. He said that there will probably be 43 cars at the site including residents, guests, visitors, nurses, caretakers, and cleaning people. He estimated that the garbage pick-up would be two cubic yards of waste, three times per week. He said that the garbage truck will block or at least cross over the full width of Nearwater Lane to enter and exit the site. He then referred to the tree cutting incident on the Stefanoni property a few years ago and noted that it had occurred over a weekend when the Planning & Zoning office was closed. He believed that the Stefanonis are in this project for greed, and wanted the Commission to make sure that they do not trample the property rights of the neighbors.

Ms. Georgia Von Schmidt said that she lives at 82 Nearwater Lane directly across the street from the Stefanoni property. She then submitted copies of a 12/6/2005 eight page memo from Schmidtworke, LLC with attachments, and read it verbatim. She started by noting that in 1999 the Stefanonis purchased the property for \$800,000 and then listed it in 2000 for \$1,795,000. In 2003, they listed it for \$2,200,000. She believed that the Stefanonis are not qualified developers of affordable housing and are not qualified to operate the project. She then referred to news clippings regarding the project. Ms. Von Schmidt noted that Nearwater Lane floods on a regular basis and some of the property is within the flood zone.

She said that the application should be denied because it is inconsistent with the State Plan of Conservation & Development policies 2005-2010. She noted that it is also incompatible with the SWRPA Regional Plan of Development of 1995 and inconsistent with the Darien 1995 Plan of Conservation & Development. She said that it is inconsistent with the Town Plan regarding environmental impact and is not compliant with the requirement of filing for a Section 850 Permit for Land Filling and Regrading. Ms. Von Schmidt mentioned that the one acre lot is too small for such an intensive development of 20 units per acre and the project does not comply with the Darien

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Zoning Regulations area and bulk requirements for the R-1 (one acre minimum lot size) neighborhood and these Regulations were designed to protect both the property owners and the general environment. She noted that the proposed project does not even comply with Designed Business and Residential Zone (DBR) Regulations which permit multi-family development in the downtown commercial zone. Those Regulations allow 8 multi-family units per acre. She explained that the proposed project does not even comply with Designed Multi-Family Residential (DMR) zone and that the maximum senior housing density in Darien is 12 units per acre not 20 units per acre. She said that parking is in the required yard spaces in this project and no open space or recreation area is being provided. She continued by noting that the proposed project would not comply with the Wakeman Road Affordable Housing Overlay Zone which was also in a single-family residential zone within a residential neighborhood and that Wakeman Road zone allowed a maximum of 6 units per acre not 20 units per acre. She noted that the proposed project would not comply with the Assisted Living and Independent Living Facilities Regulations allowed within the Service Business (SB) Zone. She said that the proposed project creates a traffic impact upon the surrounding street system; and Nearwater Lane is a busy local street and is also an evacuation route. She said that the Nearwater Lane neighborhood is basically an extremely large cul-de-sac serving over 600 residences. Ms. Von Schmidt explained that parking is inadequate. She also mentioned that the proposed project is inadequate for emergency responders and that Nearwater Lane floods frequently. She said that back-up of the existing drainage system occurs and that issue was not analyzed by the applicant. Ms. Von Schmidt explained that the proposed project would cause aggrievement and adverse impact on fair market value and that the mass and density far exceeds what is reasonable, necessary and appropriate. Her overall objection is not to the age and/or income of the residents, her objection is to the mass and scale and density of the project. She then submitted a copy of her remarks for the record.

Mr. Damanti then noted that staff has already referred this project to the Environmental Protection Commission (EPC) for their comments. The Planning & Zoning Commission would like to receive the EPC's comments prior to the close of this public hearing. Mr. Damanti explained that if the Environmental Protection Commission (EPC) decides that they have jurisdiction, then an application to that agency would be appropriate and they would probably process such an application in January or February.

Due to the late hour, 11:45 P.M, Mr. Bigelow made a motion to continue the public hearing on this matter to December 14th at 8:00 p.m. in the Auditorium of Town Hall. That motion was seconded by Mr. Kenny and unanimously approved. The meeting was then adjourned.

Respectfully submitted,

Jeremy B. Ginsberg
Planning & Zoning Director